

CRISTINA SEPE, WSBA #53609  
BRIAN H. ROWE, WSBA #56817  
Assistant Attorneys General  
JEFFREY T. EVEN, WSBA #20367  
Deputy Solicitor General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 474-7744

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT YAKIMA**

ENRIQUE JEVONS, as managing  
member of Jevons Properties LLC,  
et al.,

Plaintiffs,

v.

JAY INSLEE, in his official  
capacity of the Governor of the  
State of Washington, et al.

Defendants.

NO. 1:20-cv-03182-SAB

DEFENDANTS' RESPONSE TO  
PLAINTIFFS' MOTION FOR  
RECONSIDERATION

NOTED FOR: Nov. 15, 2021

Without Oral Argument

**I. INTRODUCTION**

Plaintiffs ask the Court to alter its summary judgment ruling in order “to correct clear error and prevent manifest injustice[.]” ECF No. 62 at 2. Plaintiffs base their motion on the Governor’s “bridge” proclamation that temporarily followed the eviction moratorium. They assert that Proclamation 21-09.2 continues to bar them from either evicting certain tenants or treating the debts of

1 other tenants as enforceable debts. Plaintiffs are wrong, both because the bridge  
 2 proclamation is set to expire of its own terms 72 hours (minus one minute) after  
 3 this Response is due (and no extension is anticipated), and because Plaintiffs’  
 4 arguments are unsupported by the text of the proclamation.<sup>1</sup>

## 5 II. ARGUMENT

### 6 A. Legal Standard

7 Federal Rule of Civil Procedure 59(e) offers “‘an extraordinary remedy,  
 8 to be used sparingly in the interests of finality and conservation of judicial  
 9 resources.’” *McElmurry v. Ingebritson*, No. 2:16-cv-00419-SAB,  
 10 2018 WL 2422746, at \*1 (E.D. Wash. May 29, 2018) (quoting *Carroll v.*  
 11 *Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)). A motion under Rule 59(e) may be  
 12 granted when: “(1) there is an intervening change in controlling law; (2) the  
 13 moving party presents newly discovered or previously unavailable evidence; and  
 14 (3) the motion is necessary to correct manifest errors of law or fact upon which  
 15 the judgment is based.” *Id.* Motions for reconsideration “are not the proper  
 16 vehicle for offering evidence or theories of law that were available to the party at  
 17 the time of the initial ruling.” *Hunter v. Johnson*, No. CV-09-165-JPH, 2010 WL  
 18 148380, at \*1 (E.D. Wash. Jan. 13, 2010). Nor is it the “time to ask the court to

---

19  
 20 <sup>1</sup> The Governor’s Proclamations are available online at, Washington  
 21 Governor Jay Inslee, Proclamations, [https://www.governor.wa.gov/office-](https://www.governor.wa.gov/office-governor/official-actions/proclamations)  
 22 [governor/official-actions/proclamations](https://www.governor.wa.gov/office-governor/official-actions/proclamations) (last visited Oct. 27, 2021).

1 rethink what it has already thought through.” *Garrott v. Andrewjeski*, No. CV-  
 2 10-391-LRS, 2012 WL 3643806, at \*1 (E.D. Wash. Aug. 23, 2012) (cleaned up).

3 **B. Plaintiffs Offer No Legal Basis for Reconsidering the Court’s**  
 4 **Summary Judgment Ruling**

5 **1. Legal background: Washington’s Eviction Moratorium and**  
 6 **SB 5160**

7 Plaintiffs originally filed this action to challenge Proclamation 20-19,  
 8 which Governor Inslee issued on March 18, 2020. Proclamation 20-19 imposed  
 9 a temporary moratorium against most residential evictions for nonpayment of  
 10 rent. The Governor revised and extended that proclamation several times, but it  
 11 ultimately expired as a matter of law on June 30, 2021. This occurred both by its  
 12 own terms and under the terms of a newly enacted state statute. Proclamation 20-  
 13 19.06 at 4; Engrossed Second Substitute S.B. 5160, 67th Leg., Reg. Sess.  
 14 (Wash. 2021), *enacted as* 2021 Wash. Sess. Laws, ch. 115, § 4(1) (*codified as*  
 15 Wash. Rev. Code 59.18.630(1)).

16 The Legislature enacted E2SSB 5160 to govern the eviction process going  
 17 forward, such that this new law would govern the landlord-tenant relationship  
 18 following the expiration of the eviction moratorium. But as this Court has  
 19 correctly explained, “Governor Inslee issued a housing stability ‘bridge’  
 20 proclamation on June 29, 2021, which was intended to ‘bridge the operational  
 21 gap between the eviction moratorium enacted by prior proclamations and the  
 22 protections and programs subsequently enacted by the Legislature.’” ECF No. 60  
 at 6–7 (quoting Proclamation 21-09, ¶ 23).

1 Plaintiffs' motion for reconsideration relates only to this temporary bridge  
 2 proclamation. It does not concern provisions of the earlier eviction moratorium  
 3 (ending in Proclamation 20-19.06) that Plaintiffs originally sued over, or of the  
 4 state statutes as revised by E2SSB 5160. Plaintiffs call attention to a provision of  
 5 the bridge proclamation that precludes landlords from serving any notice of  
 6 eviction unless a “rental assistance program and an eviction resolution pilot  
 7 program as contemplated by Section 7 of E2SSB 5160 *have been implemented*  
 8 *and are operational* in the county’” and “a tenant has been provided with, and  
 9 has, since July 1, 2021, rejected or failed to respond within 14 days of receipt of  
 10 such notice to *an opportunity* to participate in an operational rental assistance  
 11 program and an operational eviction resolution pilot program provided by  
 12 E2SSB 5160.’” ECF No. 62 at 4 (emphasis added) (quoting Proclamation  
 13 21-09.02). Plaintiffs assert that these requirements of the bridge proclamation  
 14 continue to preclude them from evicting at least some of their tenants or from  
 15 treating unpaid rent as an enforceable debt.

16 The bridge proclamation is set to expire at 11:59 pm on October 31, 2021.  
 17 Proclamation 21-09.2 at 3. The undersigned counsel do not anticipate its  
 18 extension, and expect that it will expire at the appointed witching hour.<sup>2</sup>  
 19  
 20

---

21 <sup>2</sup> This anticipated course of events can be verified after the fact on the  
 22 Governor's website. *See supra*, n.1. The site lists proclamations in numerical

1 Plaintiffs' arguments on reconsideration depend entirely on Proclamation  
 2 21-09.2, and accordingly cannot limit Plaintiffs' actions after the bridge  
 3 proclamation expires.

4 **2. Rental assistance programs do not bar Plaintiffs from evicting**  
 5 **tenants on the basis that the tenant makes too much money or**  
 6 **that tenants have moved out**

7 Plaintiffs do not dispute that rental assistance programs and the Landlord  
 8 Mitigation Program are up and running in Yakima County, where they own or  
 9 manage properties.<sup>3</sup> They simply read the bridge proclamation misleadingly to  
 10 assert that it continues to bar their actions.

11 \_\_\_\_\_  
 12 order. If Proclamation 21-09.02 were extended, that extension would appear in  
 13 that list as a Proclamation 21-09.03 shortly after issuance.

14 <sup>3</sup> Plaintiff Jevons suggests that the eviction resolution pilot program might  
 15 not be fully functional in Yakima County, but offers no legal argument on this  
 16 point. His Declaration (but not the reconsideration motion) claims that while the  
 17 local Dispute Resolution Center is functional, it is not actually providing an  
 18 eviction resolution pilot program until the bridge proclamation expires. ECF  
 19 No. 62-1, ¶ 4. This would make no sense, given that the proclamation is written  
 20 to allow evictions to proceed even if the proclamation is in effect, if the program  
 21 is up and running. *See* Proclamation 21-09.2 at 4. But this point is irrelevant going  
 22 forward, given the forthcoming expiration of the bridge proclamation.

1 Plaintiff Jevons states that he “has eight tenants whose income is too high  
2 for them to qualify for rental assistance from the rental assistance programs  
3 operating in Yakima County.” ECF No. 62-1, ¶ 2. Plaintiffs also assert that, for  
4 the same reason, Proclamation 21-09.2 prohibits them from “ever”<sup>4</sup> treating  
5 unpaid rent as an enforceable debt. ECF No. 62 at 5.

6 Proclamation 21-09.2 nowhere prohibits a landlord from giving a notice of  
7 eviction merely because the tenant makes too much money to be eligible for  
8 rental assistance. The suggestion of such an effect is counter-intuitive, if not  
9 absurd. The Proclamation merely declares that landlords “are prohibited from  
10 serving or enforcing . . . an eviction notice . . . until” two circumstances are  
11 satisfied. Proclamation 21.09.2 at 4. First, which Plaintiffs do not dispute, “a  
12 rental assistance program . . . [has] been implemented and [is] operational in the  
13 county.” *Id.* And second, a tenant must be provided with notice of “an opportunity  
14 to participate in an operational rental assistance program[.]” *Id.* To read the  
15 Proclamation as requiring that the landlord actually receive payment from a rental  
16 assistance program denies the plain meaning of the Proclamation’s words. The  
17 Proclamation merely requires “an opportunity” to participate—not an ultimate  
18 finding of eligibility for payment. *Id.* It would strain credulity to construe the

19 \_\_\_\_\_  
20 <sup>4</sup> Plaintiffs offer no explanation as to how a temporary proclamation could  
21 forbid a landlord from “ever” taking action for unpaid rent when permitted to do  
22 so under a permanent law, such as E2SSB 5160.

1 requirement for an “opportunity” to participate in the rental assistance program  
 2 to mean that the tenant ultimately qualify when the opportunity is offered. *See*  
 3 *State of Wash. v. Weatherwax*, 392 P.3d 1054, 1058 (Wash. 2017) (“In  
 4 interpreting statutes, ‘we presume the legislature did not intend absurd results’  
 5 and thus avoid them where possible.” (quoting *State of Wash. v. Eaton*, 229 P.3d  
 6 704, 706 (Wash. 2010))).

7 Plaintiff Glenn also asserts, incongruously, that the Glenn family cannot  
 8 treat unpaid rent as an enforceable debt because their tenants have moved out.  
 9 They contend that rental assistance dollars are unavailable when the tenant has  
 10 moved out. ECF No. 62 at 6; ECF No. 62-2, ¶ 3. Plaintiff Glenn attributes this  
 11 view to the local landlord mitigation program but misstates the law. State law  
 12 precludes the use of mitigation dollars only when “the tenant vacated the tenancy  
 13 *because of an unlawful detainer action* under RCW 59.12.030(3).”  
 14 RCW 43.31.605(1)(d)(ii) (as enacted by E2SSB 5160, § 5(1)(d)(ii)) (emphasis  
 15 added).<sup>5</sup> Glenn does not describe the circumstances under which the tenants  
 16

---

17 <sup>5</sup> Otherwise, the law provides for “[u]p to \$15,000 in unpaid rent that  
 18 accrued between March 1, 2020, and six months following the expiration of the  
 19 eviction moratorium and the tenant being low-income, limited resourced or  
 20 experiencing hardship, voluntarily vacated or abandoned the tenancy” or if a  
 21 tenant defaults on a repayment plan entered into under RCW 59.18.630.  
 22 RCW 43.31.605(1)(d)(i).

1 departed, but merely asserts in blanket fashion that landlord mitigation funds are  
 2 unavailable if the tenant vacated, without describing the limited circumstances  
 3 under which this may be true.

4 But again, treating unpaid rent as an enforceable debt merely requires “an  
 5 opportunity” to utilize a rental assistance program. Proclamation 21-09.2 at 5.  
 6 And presumably, if the tenant has moved out nothing bars the landlord from  
 7 renting the property to a new tenant and seeking to enforce the prior tenant’s debt.  
 8 Given that the Proclamation’s purpose includes delaying landlords’ actions until  
 9 a rental assistance program is operational, it would make no sense to construe it  
 10 as precluding action simply because the tenant has moved out. *See Weatherwax*,  
 11 392 P.3d at 1058.

12 **3. E2SSB 5160 permits eviction or treating unpaid rent as an**  
 13 **enforceable debt under the circumstances Plaintiffs describe**

14 Plaintiffs cite only the bridge proclamation as purported authority for the  
 15 notion that they are currently unable to evict tenants or treat their unpaid rent as  
 16 enforceable debts. ECF No. 62 at 4–6. Plaintiffs offer no argument that statutes—  
 17 including E2SSB 5160—will prohibit these actions after Proclamation 21-09.2  
 18 expires. Plaintiffs’ arguments thus become irrelevant after the imminent  
 19 expiration of the proclamation, based as they are in a breathtaking over-reading  
 20 of language that appears only in the bridge proclamation and not in statute.

21 Nothing in statute precludes the Plaintiffs from taking action under the  
 22 circumstances described in the Jevons and Glenn declarations filed in support of



1 reconsideration. The Landlord Mitigation Program itself predates the COVID-19  
 2 pandemic. RCW 43.31.605. The Legislature amended it to provide additional,  
 3 but limited, compensation to landlords for “unpaid rent that accrued between  
 4 March 1, 2020, and six months following the expiration of the eviction  
 5 moratorium[.]” RCW 43.31.605(1)(d) (as amended by E2SSB 5160, § 5(1)(d)).  
 6 Nothing in the law precludes landlords from seeking eviction or treating unpaid  
 7 rent as a debt merely because tenancy fails to qualify for rental assistance. *See id.*  
 8 Similarly, nothing in E2SSB 5160 precludes a landlord from treating unpaid rent  
 9 as an enforceable debt merely because the tenant has vacated the property, except  
 10 where that the landlord received landlord mitigation funds for that tenant. *See id.*

### 11 III. CONCLUSION

12 Defendants request the Court deny Plaintiffs’ motion for reconsideration.

13 DATED this 28th day of October 2021.

14 ROBERT W. FERGUSON  
 15 Attorney General

16 /s/ Jeffrey T. Even

17 JEFFREY T. EVEN, WSBA #20367

18 Deputy Solicitor General

19 CRISTINA SEPE, WSBA #53609

20 BRIAN H. ROWE, WSBA #56817

21 Assistant Attorneys General

22 800 Fifth Avenue, Suite 2000

Seattle, WA 98104-3188

(206) 474-7744

jeffrey.even@atg.wa.gov

cristina.sepe@atg.wa.gov

brian.rowe@atg.wa.gov

*Attorneys for Defendants*

**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 28th day of October, 2021, at Olympia, Washington.

/s/ Jeffrey T. Even

Jeffrey T. Even, WSBA #20367  
Deputy Solicitor General